

P20000059249

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_

Special Instructions to Filing Officer:

Office Use Only



600377881266

2021 DEC 15 PM 1:30

STATE OF FLORIDA

2021 DEC 15 PM 1:30

Amended  
Be started

DEC 16 2021

ALBRITTON

**Sunshine State Corporate Compliance Company**

*3458 Lakeshore Drive, Tallahassee, Florida 32312*

*(850) 656-4724*

DATE 12/15/2021

**\*\*WALK IN\*\***

ENTITY NAME FAZOLI'S PROMOTIONS, INC

DOCUMENT NUMBER \_\_\_\_\_

**\*\*PLEASE FILE THE ATTACHED AND RETURN\*\***

XXXXXX

*Plain Copy*

*Certified Copy*

*Certificate of Status*

**\*\*PLEASE OBTAIN THE FOLLOWING FOR THE ABOVE ENTITY\*\***

*Certified Copy of Arts & Amendments*

*Certificate of Good Standing*

**\*\*APOSTILLE / NOTARIAL CERTIFICATION\*\***

COUNTRY OF DESTINATION \_\_\_\_\_

NUMBER OF CERTIFICATES REQUESTED \_\_\_\_\_

TOTAL OWED \$70

ACCOUNT #: 120160000072

*Σ R J/10*

*Please call Tina at the above number for any issues or concerns. Thank you so much!*

**AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
FAZOLI'S PROMOTIONS, INC.**

2021/03/15 11:10:50

Fazoli's Promotions, Inc., a corporation organized and existing under and by virtue of the laws of the State of Florida, hereby certifies as follows:

1. The name of the corporation is Fazoli's Promotions, Inc. The corporation's original certificate of incorporation was filed with the Secretary of State of the State of Florida on August 5, 2020.
2. This amended and restated certificate of incorporation was duly adopted in accordance with the Florida Business Corporation Act by the board of directors and stockholders of the corporation.
3. The certificate of incorporation of the corporation is hereby amended and restated to read in its entirety as follows:

**FIRST.** The name of the Corporation is Fazoli's Promotions, Inc.

**SECOND.** The address of the registered office of the Corporation in the State of Florida is 155 Office Plaza Dr., Suite A, Tallahassee, FL 32301. The name of the registered agent of the corporation at such address is Registered Agent Solutions, Inc..

**THIRD.** The purposes to be conducted or promoted by the Company are solely to engage in developing, acquiring, owning, selling, franchising and licensing restaurants and products branded under the name "Fazoli's" or similar names, licensing of intellectual property in connection with any such activities, and retaining third parties to perform any such activities.

**FOURTH.** The total number of shares of capital stock which the Corporation shall have authority to issue is one thousand (1000) shares of Common Stock, with a \$.0001 par value per share.

**FIFTH.** The business and affairs of the Corporation shall be managed by the Board of Directors, and the directors need not be elected by ballot unless required by the Bylaws of the Corporation. The number of directors of the corporation shall be determined in the manner provided by the Bylaws and may be increased or decreased from time to time in the manner provided therein.

**SIXTH.** So long as any Obligations are outstanding, the Corporation shall at all times:

- (a) maintain its books and records separate from any other Person and file its own tax returns, if any, as may be required under applicable law, to the extent not part of a consolidated group filing a consolidated return or returns and not treated as a division or a disregarded entity for tax purposes of another taxpayer, and pay any U.S. federal and material state and local taxes required to be paid by it under applicable law, except as otherwise expressly provided in the Transaction Documents;
- (b) maintain its deposit and securities accounts, as applicable, separate from any other Person, except as permitted by the Transaction Documents in respect of other Securitization Entities;
- (c) not commingle its assets with those of any other Person, except as permitted by the Transaction Documents in respect of other Securitization Entities, and hold all of its assets in its own name;
- (d) conduct its own business in its own name;

- (c) not list its assets as assets on the financial statement of any other Person, *provided, however*, that the assets of the Corporation may be included in a consolidated financial statement of its Affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Corporation and such Affiliates and to indicate that their assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person so long as such financial statements are in accordance with GAAP, and (ii) such assets shall be listed on the Corporation's own separate balance sheet;
- (f) pay its own liabilities and expenses only out of its own funds and assets, except as provided or contemplated in the Management Agreement and other Transaction Documents;
- (g) observe all corporate formalities;
- (h) except as permitted by the Transaction Documents in respect of other Securitization Entities, maintain an arm's length relationship with its Affiliates and enter into transactions with Affiliates only on a commercially reasonable basis;
- (i) pay the salaries of its own employees (if any) from its own funds and maintain a sufficient number of employees (if any) in light of its contemplated business operations;
- (j) except as contemplated by the Transaction Documents in respect of other Securitization Entities, (i) not guarantee or become obligated for the debts of any other Person and (ii) not have any of its obligations guaranteed by any Affiliate;
- (k) except as contemplated by the Transaction Documents in respect of other Securitization Entities, not hold out its credit or assets as being available to satisfy the obligations of any other Person;
- (l) except as contemplated by the Transaction Documents in respect of other Securitization Entities, not acquire the obligations or securities of any stockholder of the Corporation or its Affiliates;
- (m) except as permitted under the Transaction Documents, not make loans to any other Person or buy or hold evidence of indebtedness issued by any other Person (except for cash and investment-grade securities issued by an entity that is not an Affiliate);
- (n) except as contemplated by the Transaction Documents in respect of other Securitization Entities, allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate;
- (o) use separate invoices, stationary and checks bearing its own name;
- (p) except as permitted under the Transaction Documents, not pledge its assets for the benefit of any other person or entity;
- (q) be, and at all times hold itself out to the public as, a legal entity separate and distinct from any other Person and, to the extent known by it, correct any misunderstanding regarding its separate identity;
- (r) not identify itself as a division or part of any other Person, other than as a wholly owned subsidiary of its sole stockholder;
- (s) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

*provided, however*, the foregoing shall not require any direct or indirect stockholder of the Corporation to make any additional capital contributions to the Corporation:

(t) remain and intend to remain solvent (within the meaning of the Bankruptcy Code) and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due; *provided, however*, the foregoing shall not require any direct or indirect stockholder of the Corporation to make any additional capital contributions to the Corporation;

(u) at all times hold itself out to the public and all other Persons under their own respective names as a legal entity separate and distinct from its stockholder(s) and any other Person;

(v) not incur, create or assume any Indebtedness or guarantee any Indebtedness other than as permitted under the Transaction Documents;

(w) not operate or purport to operate as an integrated single economic unit with respect to itself and any of its Affiliates;

(x) maintain its assets in its own name and in such a manner that that it will not be costly or difficult to segregate, ascertain or identify its assets from those of any Affiliate or constituent party or any other Person;

(y) engage, directly or indirectly, in any business other than the actions required or permitted to be performed under Article Third, the Transaction Documents or this Article Seventh;

(z) cause the officers, directors, agents and other representatives of the Corporation to act at all times with respect to the Corporation consistently and in furtherance of the foregoing and in the best interests of the Corporation; and

(aa) conduct its business so that each of the factual assumptions made about it and each of the facts stated about it in any opinion regarding substantive consolidation matters delivered to the Trustee from time to time in connection with any Series Closing Date are true and correct.

Capitalized terms used and not defined in this Article Seventh and in Article Eighth shall have the meanings set forth in that certain Base Indenture, dated on or about December 15, 2021, by and between FAT Brands Fazoli's Native I, LLC, as issuer, and UMB Bank, National Association, as indenture trustee, as amended, supplemented or otherwise modified from time.

**SEVENTH.** So long as any Obligations are outstanding, the Board of Directors shall not cause the Corporation to take any of the following actions without the prior unanimous written consent of all holders of Common Stock of the Corporation:

(bb) institute proceedings to have the Corporation be adjudicated bankrupt or insolvent;

(cc) consent to the institution of bankruptcy or insolvency proceedings against the Corporation;

(dd) file a petition seeking, or consenting to, reorganization or relief with respect to the Corporation under any applicable federal or state law relating to bankruptcy;

(ee) consolidate or merge the Corporation with or into any other Person;

(ff) sell all or substantially all of the assets of the Corporation;

- (gg) seek or consent to the appointment of a receiver, liquidator, conservator, assignee, trustee, sequestrator, custodian or any other similar official of the Corporation or a substantial part of their respective properties;
- (hh) make any assignment for the benefit of creditors of the Corporation;
- (ii) admit in writing the Corporation's inability to pay its debts generally as they become due;
- (jj) take any limited liability company action in furtherance of any of the preceding actions;
- (kk) to the fullest extent permitted by law, dissolve or liquidate the Corporation in whole or part;
- (ll) elect to treat the Corporation as an association taxable as a corporation for U.S. federal income tax purposes; or
- (mm) take any action or fail to take any action which action or failure to act may cause the Corporation to be treated as a corporation for U.S. federal income tax purposes.

**EIGHTH.** The business and affairs of the Corporation shall be managed by the Board of Directors, and the directors need not be elected by ballot unless required by the Bylaws of the Corporation. The number of directors of the corporation shall be determined in the manner provided by the Bylaws and may be increased or decreased from time to time in the manner provided therein.

**NINTH.** In furtherance and not in limitation of the powers conferred by the laws of the State of Florida, the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws; provided, however, the Board of Directors may not repeal or amend any bylaw that the stockholders have expressly provided may not be amended or repealed by the Board of Directors. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Corporation.

**TENTH.** The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law, and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to this reservation.

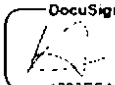
**ELEVENTH.** No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the Florida Business Corporation Act, as the same exists or may hereafter be amended. Any repeal or modification of the foregoing sentence shall not adversely affect any right or protection of any director of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

**TWELFTH.** The Corporation shall indemnify, advance expenses, and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "**Covered Person**") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably

incurred by such Covered Person. Notwithstanding the preceding sentence, except for claims for indemnification (following the final disposition of such Proceeding) or advancement of expenses not paid in full, the Corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors of the Corporation. Any amendment, repeal or modification of this Paragraph Ninth shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

\* \* \*

IN WITNESS WHEREOF, this Amended and Restated Articles of Incorporation of Fazoli's Promotions, Inc. has been executed by a duly authorized officer of this corporation on this 15th day of December, 2021.

By:  DocuSigned by:  
1223EEAF21404EB  
Name: Andrew A. Wiederhorn  
Title: President and Chief Executive Officer